U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34776158

Date: NOV. 12, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a fashion designer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R. § 204.5(h)(3), which require documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). We dismissed the Petitioner's subsequent appeal. The Petitioner then filed a combined motion to reopen and reconsider, which we dismissed because it was filed untimely. The matter is now before us on a motion to reopen.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

As to the present motion, the Petitioner is requesting that her previous motion to reopen and reconsider, which was received in April 2024 and dismissed as untimely by one day, be reopened due to travel circumstances related to medical care. The Petitioner's combined motion was based on the dismissal of an appeal that included a request for additional time to submit a brief due to the same medical and travel circumstances. To support that request, the Petitioner submitted with her appeal a hospital certificate dated September 18, 2023, describing recommended treatment for a deviated septum. We note that the Petitioner did not submit a request concerning timeliness with her subsequent motion,

which would have been the appropriate point at which to request that the late filing of her motion be considered timely.

The Petitioner now submits the previously submitted hospital certificate, as well as a medical scan and other documentation concerning two medical appointments in April and June of 2023. In addition, the Petitioner submits a travel record showing that she departed the United States on September 12, 2023, and returned on June 14, 2024. While the Petitioner asserts that the "extraordinary circumstances" of her absence from the United States rendered her "unable to effectively communicate with [her attorney's] office and provide the necessary evidence to support the previously dismissed I-290B Motion in a timely manner," she has not specified how her absence delayed the filing of her motion or provided evidence to support her assertions. The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner has not submitted new facts, supported by documentary evidence, to warrant reopening her previous motion.

The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen and reconsider. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew based on the present motion to reopen and, therefore, the underlying petition remains denied.

Although not the basis for dismissal of the current motion, we note that even if the previously dismissed combined motion to reopen and reconsider had been timely filed, it would have been dismissed on the merits. On motion to reopen, the Petitioner submitted a brief that largely reiterated arguments presented in her appeal brief, with the exception of reference to a newly submitted article written about her in a magazine. The magazine's date of "March-April 2024" post-dates the petition's filing date of August 31, 2020, by approximately four years, and therefore could not serve as evidence to demonstrate her eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1); *see also Matter of Izummi*, 22 I&N Dec. at 175 (Assoc. Comm'r 1998) (stating that a petition cannot be approved at a future date after the self-petitioner becomes eligible under a new set of facts). Because the motion to reopen did not include new facts or new evidence, the motion would not have met the requirements of a motion to reopen and would have been dismissed. We also note that the Petitioner's brief did not address any conclusions reached in our decision to dismiss the appeal, but repeated arguments against determinations made by the Director in denying her petition and subsequent motions filed with the Texas Service Center. The Petitioner only generally referenced her disagreement with the appeal decision without addressing the content of that decision. A motion to reconsider[1] is not a process by which a party may submit, in essence, the same brief previously presented and seek reconsideration by generally alleging error in the prior decision. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). The Petitioner did not identify a law or policy that we incorrectly applied to the evidence of record in dismissing her appeal. Therefore, the motion would not have met the requirements of a motion to reconsider and would have been dismissed.

[1] A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

In sum, we will dismiss the motion to reopen because the Petitioner has not established new facts that would warrant reopening of the proceeding.

ORDER: The motion to reopen is dismissed.